

SENATE BILL NO. 464

INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PERSON CONDUCTING A REMEDIAL ACTION FROM INCLUDING A COVENANT NOT TO SUE IN A CONTRACT WITH A PROPERTY OWNER; PROVIDING CERTAIN EXCEPTIONS; ESTABLISHING A CIVIL PENALTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prohibition of covenant not to sue -- exceptions. (1) Except as provided in subsections (2) and (3), a person may not include a covenant not to sue in a contract with a property owner for remedial action of a listed site.

(2) A contract between a property owner and a person conducting a remedial action on a listed site may, by mutual agreement, include a covenant not to sue if the person conducting the remedial action has:

(a) provided the property owner with a copy of a plan approved by the department or the United States environmental protection agency describing all of the remedial actions that will occur on the property owner's land; and

(b) held a public meeting in the county where the listed site is located to collect public comment on the remedial action plan.

(3) This section does not apply to contracts or access agreements in which remuneration of at least \$1,000 is a part of the contract or access agreement.

(4) As used in this section, the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Listed site" means one or more tracts of land, buildings, structures, or other facilities containing a hazardous or deleterious substance that have been listed by the department pursuant to Title 75, chapter 10, part 7, or placed on the national priorities list pursuant to 42 U.S.C. 9601, et seq.

NEW SECTION. Section 2. Civil penalty. (1) A district court may assess a civil penalty of not more than \$1,000 per day upon a person that violates the provisions of [section 1].

1 (2) An action under this section is not a bar to enforcement by injunction or other appropriate civil
2 remedy.

3 (3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner.
4 The action must be filed in the district court of the county in which the violation occurred.

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6 **NEW SECTION. Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified
7 as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 and 2].

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9 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2009.

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11 **NEW SECTION. Section 5. Applicability.** [This act] applies to covenants and agreements entered into
12 on or after [the effective date of this act].

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